APPEAL NO. 040102
FILED FEBRUARY 18, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on December 2, 2003. The hearing officer determined that the appellant's (claimant) compensable injuries of _____, do not include an injury to his lumbar spine. The claimant appeals arguing that the hearing officer's extent-of-injury determination is against the great weight and preponderance of the evidence. The respondent (carrier) asserts that the hearing officer's decision is supported by sufficient evidence and that the claimant's appeal was not timely filed.

DECISION

Affirmed.

The appeal in this case was timely filed by the claimant. According to records of the Texas Workers' Compensation Commission (Commission), the hearing officer's decision was mailed to the claimant on December 12, 2003. The appeal states that the claimant received the hearing officer's decision on December 17, 2003. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Not counting Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, the claimant had until January 13, 2004, to file his appeal. Section 410.202. The claimant's appeal was mailed to the Commission on January 13, 2004, and received on January 15, 2004; thus, the appeal is timely.

It is undisputed that the carrier has accepted a _____, compensable injury to the claimant's cervical spine, thoracic spine, arms, and shoulders. The carrier contends that the claimant's compensable injury does not extend to and include his lumbar spine. The claimant testified that on _____, he tripped and fell off a ramp at work and reported his injury to his employer. The claimant testified that he continued to work with great pain in his arms, which masked his back pain, until he was laid off from his employment on January 27, 2002. The claimant explained that he delayed seeking medical treatment until February 20, 2002, because the employer was in the process of changing insurance carriers and the claimant was without an insurance card. The medical report dated February 20, 2002, reflects that the claimant complained of pain to his neck and both arms, and that he had a history of cervical spine nerve compression. An MRI of the lumbar spine dated April 26, 2002, reflects mild degenerative disc disease at L3-4 and L4-5, significant degenerative disc disease at L5-S1, and disc herniation at L5-S1 which touches and posteriorly deviates the traversing left S1 nerve root and appears to also touch the traversing right S1 nerve root. The claimant contends that his compensable injury of _____, extends to include his lumbar spine.

The Appeals Panel has held that the question of the extent of injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In the instant case, the hearing officer was not persuaded by the claimant's testimony or his medical evidence that his compensable injury of _____, extends to and includes an injury to the lumbar spine particularly because of lack of contemporaneous lumbar back complaints. In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CONNECTICUT INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, COMMODORE 1, SUITE 750
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Margaret L. Turner
Appeals Judge

_____
Edward Vilano
Appeals Judge